

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

LEWIS BOB GRANT, JR.,	)	
	)	
Movant,	)	
	)	
vs.	)	No. 4:06CV933 HEA
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

**MEMORANDUM AND ORDER**

This matter is before the Court on the government's Motion to Dismiss movant's motion pursuant to 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody. As the basis for the Motion to Dismiss, the government states that movant entered into a Plea Agreement wherein movant agreed to waive appeal of "all non-jurisdictional issues...including...any issues" regarding the factual basis of his plea. The government urges that because of this appeal waiver, movant cannot now claim that he was prejudiced by any alleged ineffectiveness of counsel for failing to file an appeal on his behalf.

This argument was raised in a matter in this Court in *George Hollins v. United States of America*, Cause Number 4:04CV1205 RWS. In *Hollins*, the movant sought a Certificate of Appealability as to whether a hearing should have been held regarding whether movant requested that his attorney file a Notice of

Appeal on his behalf. The Eighth Circuit Court of Appeals remanded the matter to this Court for an “evidentiary hearing on whether appellant instructed his counsel to file an appeal.” The Court further held that if “the district court finds that appellant instructed his counsel to file an appeal this appeal will be reinstated and this court will determine whether the appeal waiver is valid.” *Hollins v. United States of America*, Cause Number 05-3727, Judgment dated July 10, 2006. Based on this Judgment, this Court cannot, without a more thorough record, conclude that the appeal waiver requires a dismissal of the motion at this time.

Accordingly,

**IT IS HEREBY ORDERED** that the motion to dismiss is denied, without prejudice.

**IT IS FURTHER ORDERED** that respondent shall file a responsive pleading to the motion within 30 days from the date of this Order.

Dated this 28th day of August, 2006.



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HENRY EDWARD AUTREY  
UNITED STATES DISTRICT JUDGE